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April 25, 2005

Clerk of the Court
Chelan County Superior Court
350 Orondo, 5th Level
Wenatchee, WA 98801

Re: *Borders v. King County, et al.*
Chelan County Superior Court Cause No. 05-2-00027-3

Dear Court Clerk:

I am e-filing the following documents:

1. Letter to Clerk of Chelan County Superior Court;
2. Reply in Support of Washington State Democratic Central Committee's Motion in Limine to Exclude Evidence of Petitioners' Erroneously Listed "Illegal Convicted Felon Voters;"
2. Declaration of William C. Rava in Support of Washington State Democratic Central Committee's Motion in Limine to Exclude Evidence of Petitioners' Erroneously Listed "Illegal Convicted Felon Voters;"
4. (Amended Proposed) Order Granting Washington State Democratic Central Committee's Motion in Limine to Exclude Evidence of Petitioners' Erroneously Listed "Illegal Convicted Felon Voters;" and
5. Certificate of Service.

[15934-0006/SL051150.099]

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MENLO PARK · OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

April 25, 2005
Page 2

Thank you for your assistance in this matter.

Very truly yours,


William C. Rava

WCR:sw

CONTENTS

1
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8
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16
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18
19
20
21
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I. INTRODUCTION1

II. ARGUMENT AND AUTHORITY2

 A. WSDCC's Motion in Limine is Procedurally Appropriate.....3

 B. Petitioners Must Prove Each Illegal Vote by "Clear and Convincing"
 Evidence.4

 C. Petitioners Concede that They Must Prove Four of the Elements
 Identified by WSDCC.....6

 D. Petitioners Are Simply Wrong in Stating That They Do Not Have to
 Prove that a Felon Voter Was Not Discharged, or Otherwise Restored
 to His Civil Rights.7

III. CONCLUSION.....10

1
2
3
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I. INTRODUCTION

Intervenor-Respondent Washington State Democratic Central Committee ("WSDCC") filed its Motion in Limine to Exclude Evidence of Petitioners' Erroneously Listed "Illegal Convicted Felon Voters" in order to streamline the issues at trial by asking the Court to clarify the elements required to prove that a felon cast an "illegal vote" under RCW 29A.68.020(5). WSDCC's Motion submitted that there were six such elements, on which Petitioners bear the burden of proof, including proving that the person: (1) was convicted as an adult, not adjudicated as a juvenile; (2) was convicted of a felony (i.e., was not convicted of a misdemeanor or gross misdemeanor); (3) was not given a deferred sentence; (4) was not discharged pursuant to RCW 9.94A.637; (5) cast a ballot in the 2004 General Election; and (6) marked that ballot to indicate a vote for a gubernatorial candidate. The Secretary of State agrees that "with limited qualifications [regarding *how* Petitioners may prove the final element], the Intervenors have set forth the proper standards to be applied in determining whether a voter in the gubernatorial election was a disqualified felon." Sec. State Resp. to WSDCC's Mot. in Limine to Exclude Evidence of Pet. Erroneously Listed "Illegal Convicted Felon Voters" ("Sec. State Resp. to Mot. in Limine") at 2.

Prior to filing its Motion (disclosed April 1 by letter to the Court and filed April 13), WSDCC asked Petitioners if they would stipulate to the above elements of proof of an "illegal vote" under RCW 29A.68.020(5). Petitioners did not even bother to respond to WSDCC's proposed stipulation, filed their own motion to clarify the burden of proof regarding illegal votes by felons, and now have the gall to criticize WSDCC for improperly

1 denominating its motion a "motion in limine," instead of calling it a "motion to clarify."¹ In
2 any event, Petitioners' Opposition concedes that Petitioners must prove four of the six
3 elements identified in WSDCC's Motion: (1) adult conviction, (2) of a felony, (3) ballot cast
4 in the 2004 General Election, and (4) ballot marked to vote for gubernatorial candidate.
5
6 Petitioners have not included in their final list of allegedly illegal voters (submitted on
7 April 15, after WSDCC's motion was filed) any persons convicted prior to July 1, 1984 who
8 received a "deferred" sentence under RCW 9.95 *et seq.*, and therefore whether Petitioners
9 must prove that no deferred sentence was given is apparently moot. Thus, this Motion boils
10 down to a dispute as to whether – and how – Petitioners must prove that each allegedly
11 illegal felon voter has not had his civil rights restored and to Petitioners' burden of proof on
12 all of these elements.
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22 The Court should grant WSDCC's Motion and, at the same time, deny the related and
23 overlapping motion filed by Petitioners.²
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26 **II. ARGUMENT AND AUTHORITY**

27 The context for WSDCC's Motion is that Petitioners' then-current list of alleged
28 illegal felon voters named hundreds of persons who were neither felons nor illegal voters.
29 WSDCC's Motion identified examples of these errors by category, but expressly stated that
30 the Motion was not intended as an exhaustive review of all the erroneously-listed individuals
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41 ¹ Although the Court is unlikely to be confused by the change in nomenclature, Petitioners'
42 Opposition to WSDCC's Motion in Limine to Exclude Evidence of Petitioners' Erroneously Listed
43 "Illegal Convicted Felon Voters" was re-named by Petitioners as their "Opposition to WSDCC's
44 Motion to Exclude Evidence of Illegal Voters."
45

46 ² WSDCC agrees with the Secretary of State's suggestion that the Court consider these two
47 motions together. *See* Sec. State Resp. to Pet. Mot. to Clarify Burden of Proof re Illegal Votes ("Sec.
State Resp. to Mot. to Clarify") at 1, n.1.

1 on Petitioners' evolving list of names. Although Petitioners' final list of alleged illegal felon
2 voters, disclosed on April 15, no longer contains the hundreds of persons who had never
3 been convicted of a felony (a response by Petitioners to media coverage and WSDCC's letter
4 noting this massive category of error), Petitioners' list still includes individuals who do not
5 satisfy the elements that even Petitioners concede are applicable to a claim of an illegal vote
6 under RCW 29A.68.020(5).
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13 **A. WSDCC's Motion in Limine is Procedurally Appropriate.**

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15 Petitioners assert that the Court should deny WSDCC's Motion because "it is really a
16 motion to establish what Petitioners must prove at trial before the court can conclude that a
17 vote is an 'illegal vote' cast by a felon." Pet. Opp. to WSDCC's Mot. to Exclude Evidence of
18 Illegal Voters ("Opp.") at 2. Although they "agree it would be helpful if the court clarified
19 certain standards and the order of proof that will be required at trial," they suggest that the
20 Court should summarily deny WSDCC's Motion because it is improperly framed as a
21 motion in limine. *Id.* at 4. The Secretary of State, while agreeing with Petitioners that
22 WSDCC's Motion is "premature" to the extent it seeks to exclude evidence that has not yet
23 been introduced, fundamentally agrees that "the [WSDCC] Intervenors have identified the
24 elements necessary to be proven in order to establish an illegal felon vote, and entry of an
25 order to that effect would properly streamline trial." Sec. State Resp. to Mot. in Limine at 4.
26 WSDCC wholeheartedly agrees.
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39 In essence, WSDCC's Motion seeks two rulings. First, as Petitioners correctly assert,
40 WSDCC's Motion asks the Court to establish the elements of an Illegal Convicted Felon
41 Voter that Petitioners must prove at trial. As discussed below, Petitioners do not dispute that
42 they will have to prove nearly all of the elements addressed in WSDCC's Motion and
43 therefore Petitioners' procedural objections are irrelevant. Second, WSDCC's Motion asks
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1 the Court to, at trial, exclude any evidence of "illegal felon votes" unless Petitioners meet
2 each of those elements.
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4 Petitioners intend to call the two researchers who compiled the lists of alleged felon
5 voters to testify at trial regarding "Petitioners' efforts to research illegal votes" and "the
6 collection and compilation of data relied on by [P]etitioners and their experts." Decl. of
7 William C. Rava in Supp. of WSDCC's Mot. in Limine to Exclude Evidence of Petitioners'
8 Erroneously Listed "Illegal Convicted Felon Voters," Ex. A (Petitioners' Witness List)
9 (listing Julie M. Sund and Christopher L. Yetter as witnesses who may be called at trial).
10 Petitioners cannot prove that illegal votes were cast by felons in such a summary fashion;
11 rather, they must prove each element addressed in WSDCC's Motion for each alleged Illegal
12 Convicted Felon Voter.³
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22 **B. Petitioners Must Prove Each Illegal Vote by "Clear and Convincing"**
23 **Evidence.**
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25 While acknowledging that they bear the burden of proof, Opp. at 4, Petitioners
26 dispute that the burden is anything higher than a mere "preponderance of the evidence."
27 This argument is thoroughly rebutted by the Secretary of State in other briefing. *See* Sec.
28 State. Resp. to Mot. to Clarify at 3-6. Among other reasons, the Secretary of State has noted
29 that "[b]oth the law and the public interest require that the certified results of an election be
30 presumed valid until clearly proven otherwise." *Id.* at 3. The Secretary of State also agrees
31 with WSDCC's common sense argument that the standard for contesting a statewide election
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44 ³ WSDCC does not expect that such an order would require the Court to conduct an
45 individual examination of the documents for each alleged felon voter. Rather, each party will
46 evaluate all of the documents supporting allegations of each felon voter, and stipulate to much of that
47 evidence, leaving only the disputed facts for the Court to resolve by testimony and examination of
documentation.

1 involving nearly three million votes should not be any lower than the "clear and convincing"
2 standard required in a challenge to the registration of a single voter under RCW 29A.08.820.
3
4 Sec. State. Resp. to Mot. to Clarify at 5 ("The same standard ['clear and convincing'] should
5
6 apply when election results are contested under RCW 29A.68.020. . . ."). Under
7
8 Washington law, registration as a voter – even by a former felon – is "presumptive evidence
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10 of his or her right to vote," RCW 29A.08.810, and the standard for stripping these voters of
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12 their constitutional right to vote in a post-election contest should be no less than it would be
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14 to challenge them pre-election, i.e. clear and convincing. See Sec. State. Resp. to Mot. to
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16 Clarify ("Given both the presumption that election results are valid until proven otherwise
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18 and the constitutionally-protected nature of the right to vote, no vote should be upheld and
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20 discounted absent clear proof that the voter was legally disenfranchised.").

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23 Aside from citations to some non-Washington cases,⁴ Petitioners' argument for the
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25 "preponderance of the evidence" standard is based solely on a single sentence from
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27 *Foulkes v. Hayes*, 85 Wn.2d 629, 636 (1975). See Opp. at 4-5. The language in *Foulkes*
28
29 about "preponderance of the evidence" applied to claims of "neglect of duty" *by an election*
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31 *official* and not to votes that were illegal because of improper conduct by the voter. In any
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36 ⁴ In its Motion, WSDCC noted that several states require clear and convincing evidence to
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38 prevail in an election contest. Motion at 8, n.4. Given the variety in the states' election contest
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40 statutes and the evolution of common law, it is not surprising that Petitioners were able to identify
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42 three jurisdictions that purportedly permit an election contest to prevail on the basis of a
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44 preponderance of the evidence. Opp. at 5 (citing cases from New Jersey, Louisiana, and
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46 Connecticut). The Louisiana case is clearly inapposite as it did not involve a post-election challenge
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one, and, in some jurisdictions, declared election results are to be upheld unless there is clear and
convincing evidence of an erroneous result." 29 C.J.S. ELECTIONS § 482.

1 event, whatever the burden of proof for proving the fact of neglect or the fact of an illegal
2 vote, the ultimate burden of proving that the result was a changed outcome of the election is
3 far higher than a mere preponderance of the evidence. Changing the outcome of an election,
4 particularly a Governor's election, disrupts the stability of government and results in a great
5 public expense and distraction. Elections may be set aside only if "clearly invalid." *In re*
6 *Contested Election of Schoessler*, 140 Wn.2d 368, 383 (2000); *Dumas v. Gagner*, 137
7 Wn.2d 268, 283 (1999), *Becker v. County of Pierce*, 126 Wn.2d 11, 11-12 (1995). *Foulkes*
8 does not set the standard for setting aside an election. *Schlosser*, *Dumas*, and *Becker*, which
9 require the contestant to prove that the election was "clearly invalid" were all decided well
10 after *Foulkes* and do not cite *Foulkes* to discuss what standard of proof applies in election
11 contests. *Schoessler*, 140 Wn.2d at 383; *Dumas*, 137 Wn.2d at 283; *Becker*, 126 Wn.2d
12 at 11-12.
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25 **C. Petitioners Concede that They Must Prove Four of the Elements**
26 **Identified by WSDCC.**

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28 Petitioners explicitly acknowledge that they must prove four of the elements
29 addressed in WSDCC's Motion: (1) that each alleged illegal voter was convicted as an
30 adult, Opp. at 6 ("Petitioners acknowledge that they bear the burden of proof with respect to
31 showing that the illegal votes were cast by voters with an adult felony conviction."); (2) that
32 each alleged illegal voter was convicted of a felony, *id.* at 6 ("Petitioners acknowledge that
33 they must show that the votes in question were illegal because they were cast by a person
34 convicted of a felony."); (3) that each allegedly illegal voter actually voted in the 2004
35 General Election,⁵ *id.* at 9 ("Petitioners Acknowledge That They Must Prove That the
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⁵ Instead of disputing that they must prove that each voter actually voted in the 2004 General Election, Petitioners argue that they will prove that each alleged illegal voter actually voted "through

1 Illegal Felon Voters Did in Fact Vote."); and (4) that each allegedly illegal voter cast a ballot
2 for a gubernatorial candidate. *Id.* at 10 (noting that Petitioners will "prove" this element
3 through proportionate reduction, a method of proof addressed in another motion filed by
4 WSDCC). Given that WSDCC, Petitioners, and the Secretary of State agree that these four
5 elements are necessary to prove an illegal vote under RCW 29A.68.020(5), the Court should
6 enter an order clarifying this standard without further ado. WSDCC addresses below
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D. Petitioners Are Simply Wrong in Stating That They Do Not Have to Prove that a Felon Voter Was Not Discharged, or Otherwise Restored to His Civil Rights.

Petitioners do not really dispute that they bear the burden of proving that a felon voter had not had his civil rights restored, but merely dispute *how* the law requires them to prove this. On the theory that Petitioners should not be required to "prove a negative," Petitioners seek to shift their burden to the "counties charged with error," most of which are no longer parties to this action, to establish that an individual's rights were not restored.⁶ Petitioners ignore the fact that no error has been committed by election officials in following this state's voter registration laws.

county records of voters credited with voting, signatures on poll books, absentee ballot return envelopes bearing voter signatures, and provisional ballot return envelopes bearing voter signatures." Opp. at 9. WSDCC has addressed Petitioners' arguments that it can use county databases containing records of "voter crediting" in its Motion in Limine to Exclude Evidence of "Voter Crediting" and to Require Petitioners to Introduce Best Evidence of Voting.

⁶ For similar reasons, Petitioners argue that they should not be required to "prove the negative" that an individual did not receive a deferred sentence. Given that Petitioners' final list of illegal voters (disclosed after WSDCC filed its Motion) does not contain any persons given a deferred sentence RCW 9.95 *et seq.*, the issue is apparently moot. Because a dismissal under RCW 9.95.240 would operate to restore an individual's civil rights, if the issue were not moot, it could be considered under the element of rights restoration.

1 An individual's vote is one of the most valuable possessions he or she has in a
2 democratic society. It should not be taken away lightly. Disenfranchising a citizen should
3 not be done on the basis of assumption about the facts. Petitioners seek to disenfranchise a
4 large number of voters. It is Petitioners' obligation to prove each and every element by clear
5 and convincing evidence before they take away a vote. *See* Sec. State Resp. to Mot. to
6 Clarify at 1 ("This motion should be denied because the burden of proof rests with the party
7 alleging a vote to have been cast illegally and makes no provision for shifting that
8 burden.").⁷

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Petitioners argue that proof that an individual's sentencing court file contains no
certificate of discharge constitutes "*prima facie*" evidence that the individual's rights were
not restored. Even assuming that every court file is always current and contains every single
piece of paper intended to be filed there, Petitioners make the sweeping assumption that a
certificate of discharge entered by the sentencing judge is the only way in which a felon's
rights can be restored.⁸ Both the Secretary of State and the amicus American Civil Liberties
Union of Washington ("ACLU") go even beyond WSDCC's Motion in identifying the
numerous potential ways for a felon to have his civil rights restored. *See* Amicus Curiae
Brief of ACLU at 15; Sec. State Resp. to Mot. to Clarify at 2; Sec. State Resp. to Mot. in
Limine at 3. Felons may seek a pardon from the governor, which restores civil rights. *See*

⁷ As the Secretary of State noted, there is authority requiring a party with the burden of proof
to prove a negative. *See* Sec. State Resp. to Mot. to Clarify at 3 (citing *State v. Prestegard*, 108 Wn.
App. 14, 19 (2001)).

⁸ Court staff and clerk's office staff are dedicated and committed to their jobs. But they are
also human and the volume of paper they deal with is truly staggering. The possibility of misfiling
cannot be ignored, nor should the Court ignore the individuals who will be harmed – the voters who
will be disenfranchised – by assuming no errors occurred. The ACLU's Amicus Brief aptly
demonstrates the falsity of such an assumption.

1 RCW 9.96.010. For pre-Sentencing Reform Act ("SRA") convictions, Indeterminate
2 Sentence Review Board ("ISRB") can issue orders of discharge, RCW 9.96.050, or the
3 sentencing court may terminate a suspended or deferred sentence. RCW 9.92.066
4 (suspended sentence); RCW 9.95.240 (deferred sentence); *see also* Amicus Brief at 6. For
5 felonies sentenced under the SRA, civil rights are restored pursuant to RCW 9.94A.637.⁹
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10 Moreover, the roles that the ISRB, DOC, county clerks, and sentencing courts play in
11 rights restoration have varied since the enactment of the SRA. *See* Amicus Brief at 7-15.
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13 As a result, Petitioners may not rely solely upon the absence of a certificate of discharge
14 from the sentencing court file as "*prima facie*" evidence that an individual's rights were not
15 restored. Indeed, the ACLU opined that "it is impossible to rely on any single source of
16 information" to determine whether an individual has had his rights restored. Amicus Brief
17 at 16. That the process contains numerous complications lends further support to WSDCC's
18 suggestion that the Court focus on each alleged felon voter's *eligibility* for rights restoration
19 in determining whether Petitioners have proven that his rights were not restored.
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28 Petitioners acknowledge that they must prove that each alleged felon voter's rights
29 were not restored. The Court should therefore exclude any evidence of alleged felon voters
30 unless Petitioners prove by clear and convincing evidence that each person did not have his
31 rights restored. Moreover, the Court should order that Petitioners cannot shift the burden of
32 proving that rights were restored to any other party or non-party.
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46 ⁹ These Washington statutes only apply to Washington convictions. Other procedures exist
47 for restoration of voting rights for out-of-state felonies. *See* Amicus Brief at 15-16; Sec. State Resp.
to Mot. in Limine at 3.

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III. CONCLUSION

For the forgoing reasons and those stated in its moving papers and in the Secretary of State's Response, the Court should grant WSDCC's Motion and rule that, in order to establish an illegal vote under RCW 29A.68.020(5), Petitioners must prove the following elements by clear and convincing evidence: that each allegedly illegal voter (1) was convicted as an adult, not adjudicated as a juvenile; (2) was convicted of a felony (i.e., was not convicted of a misdemeanor or gross misdemeanor); (3) has not been discharged pursuant to RCW 9.94A.637, or otherwise restored to his or her civil rights; (4) cast a ballot in the 2004 General Election; and (5) marked that ballot to indicate a vote for a gubernatorial candidate.

DATED: April 25, 2005.

PERKINS COIE LLP

By /s/ Kevin J. Hamilton
Kevin J. Hamilton, WSBA # 15648
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I, William C. Rava, state and declare as follows:

1. I am one of the attorneys for Intervenor-Respondent Washington State Democratic Central Committee ("WSDCC"), am competent to make this declaration, and do so upon personal knowledge as indicated.

2. A true and correct copy of excerpts of Petitioners' Witness List is attached hereto as Exhibit A.

I declare subject to penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED and DATED at Seattle, Washington, this 25th day of April, 2005 by
WILLIAM C. RAVA.

/s/ William C. Rava
William C. Rava

EXHIBIT A

1 improper casting and counting of provisional ballots, and other errors, misconduct, or
2 neglect.

3 **Christopher Vance**, Petitioner, 16400 Southcenter Parkway, Suite 200, Tukwila,
4 WA 98199. Some of the individual Petitioners may testify regarding their reasons for
5 filing the election contest and their knowledge of particular errors, neglect, and misconduct
6 by elections officials.

7 **Experts:**

8 **Professor Anthony Gill**, Department of Political Science, Box 353530, University
9 of Washington, Seattle, WA 98195-3530, an associate professor of political science at the
10 University of Washington, may testify regarding various aspects of the election, the nature
11 of the votes that were invalidly considered, and the likely effect of these votes on the
12 outcome. He may testify about his analysis of for whom invalid ballots were cast and that
13 invalid ballots appear to have tipped the outcome of the election. His report is attached to
14 this disclosure as Exhibit A.

15 **Professor Jonathan Katz**, D.H.S.S. (228-77), California Institute of Technology,
16 Pasadena, CA 91125, a professor of political science at the California Institute of
17 Technology, may testify regarding various aspects of the election, the nature of the votes
18 that were invalidly considered, and the likely effect of these votes on the outcome. He may
19 testify about the closeness of the election, the margin of error in tabulation processes, and
20 his analysis of for whom invalid ballots were cast and of the impact of invalid ballots on
21 the outcome of the election. His report is attached to this disclosure as Exhibit B.

22 **II. WITNESSES WHO MAY BE CALLED AT TRIAL**

23 Petitioners anticipate that, between now and trial, the parties will be able to
24 stipulate to certain facts regarding the election, such as the accuracy of precinct returns
25 statewide and the number and kind of at least some of the illegal and invalid votes that
26 were cast and counted in particular precincts. If the parties are able to reach such
27

1 neglect, and misconduct of elections officials and the effect of such conduct on the
2 election.

3 **Julie Sund**, 5924 Merlot Lane, S.E., Olympia, WA 98513, a researcher and analyst
4 for petitioners, may testify regarding Petitioners' efforts to research illegal votes and
5 errors, neglect, and misconduct of elections officials and the effect of such conduct on the
6 election and regarding the collection and compilation of data relied upon by petitioners and
7 their experts.

8 **Afton Swift**, Campaign Manager for the Rossi for Governor Campaign, 16203 NE
9 12th Street, Bellevue, WA 98008, may testify regarding Petitioners' efforts to research
10 illegal votes and errors, neglect, and misconduct of elections officials and the effect of such
11 conduct on the election.

12 **Doug Timpe**, 19432 79th Ct. N.E., Kenmore, WA 98028, a researcher and analyst
13 for petitioners, may testify regarding Petitioners' efforts to research illegal votes and
14 errors, neglect, and misconduct of elections officials and the effect of such conduct on the
15 election and regarding the collection and compilation of data relied upon by petitioners and
16 their experts.

17 **Nicole Way**, King County election official, King County Records, Elections and
18 Licensing Services, King County Admin. Building., #553, 500 4th Avenue, Seattle, WA
19 98104, may testify regarding King County's provisional, absentee, and poll site ballot
20 reconciliation efforts, attempts to resolve discrepancies regarding same, uncounted valid
21 ballots, improperly cast and counted provisional ballots, and other errors, misconduct, or
22 neglect.

23 **Chris Yetter**, 9 Blossom Lane, S.W., Lakewood, WA 98499, a researcher and
24 analyst for petitioners, may testify regarding Petitioners' efforts to research illegal votes
25 and errors, neglect, and misconduct of elections officials and the effect of such conduct on
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1 the election and regarding the collection and compilation of data relied upon by petitioners
2 and their experts.

3 **Auditors.** The following auditors may testify regarding various illegal votes,
4 errors, neglect, and/or misconduct if the parties are unable to reach stipulations regarding
5 certain facts about the election:

6 **Evelyn Arnold**, Chelan County Auditor, PO Box 400, Wenatchee WA 98807-
7 0400, may testify regarding voters who cast multiple ballots in Chelan County and other
8 errors, misconduct, or neglect.

9 **Vicky Dalton**, Spokane County Auditor, 1033 West Gardner, Spokane WA 99260-
10 0020, may testify regarding votes by convicted felons and whether Spokane County
11 cancelled the voter registrations of such persons and other errors, misconduct, or neglect.

12 **Karen Flynn**, Kitsap County Auditor, 1026 Sidney Ave, Suite 175, Port Orchard
13 WA 98366-4206, may testify regarding votes by convicted felons and whether Kitsap
14 County cancelled the voter registrations of such persons and other errors, misconduct, or
15 neglect.

16 **Shirley Forslof**, Whatcom County Auditor, 311 Grand Avenue, Suite 103,
17 Bellingham WA 98225-4038, may testify regarding votes by convicted felons and whether
18 Whatcom County cancelled the voter registrations of such persons and other errors,
19 misconduct, or neglect.

20 **Bobbie Gagner**, Benton County Auditor, PO Box 470, Prosser WA 99350-0470,
21 may testify regarding votes by convicted felons and whether Benton County cancelled the
22 voter registrations of such persons and other errors, misconduct, or neglect.

23 **Norma Hickock-Brummett**, Skagit County Auditor, PO Box 1306, Mount Vernon
24 WA 98273-1306, may testify regarding votes by convicted felons and whether Skagit
25 County cancelled the voter registrations of such persons and other errors, misconduct, or
26 neglect.

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counties regarding the counties' errors in rejecting valid ballots for signature mismatch problems.

In addition, if the court decides to allow Intervenors to assert as offsetting errors alleged mistakes by elections officials in rejecting ballots for signature match problems (a motion is pending on this issue), some of the 223 people listed on Exhibit D hereto may testify about the wrongful rejection of their ballots, their efforts to have those errors corrected, and the counties' refusal to correct the error committed by rejecting their ballots.

DATED this 15th day of April, 2005.

Davis Wright Tremaine LLP
Attorneys for Petitioners

By 

Harry J. F. Korrell
WSBA #23173
Robert J. Maguire
WSBA #29909

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THIS MATTER comes before the Court on Washington State Democratic Central Committee's Motion in Limine to Exclude Evidence of Petitioners' Erroneously Listed "Illegal Convicted Felon Voters" (the "Motion"). The Court having reviewed the Motion, and any other briefing filed in support of or opposition thereto, and any reply, and all declarations filed in support of or in opposition to the Motion, and being fully advised in the premises, now, therefore, ORDERS that:

Washington State Democratic Central Committee's Motion in Limine to Exclude Evidence of Petitioners' Erroneously Listed "Illegal Convicted Felon Voters" is hereby GRANTED.

The Court hereby excludes any evidence of illegal votes cast by a felon unless Petitioners prove by clear and convincing evidence that the person:

- (1) was convicted as an adult, not adjudicated as a juvenile;
- (2) was convicted of a felony (i.e., was not convicted of a misdemeanor or gross misdemeanor);
- (3) has not been discharged pursuant to RCW 9.94A.637, or otherwise restored to his or her civil rights;
- (4) cast a ballot in the 2004 General Election; and
- (5) marked that ballot to indicate a vote for a gubernatorial candidate.

ENTERED this ____ day of _____ 2005.

The Honorable John E. Bridges

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Presented by:

/s/ William C. Rava
Kevin J. Hamilton, WSBA # 15648
William C. Rava, WSBA # 29948
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

Attorneys for Intervenor-Respondent
Washington State Democratic Central
Committee

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The following documents were caused to be served:

1. Letter to Clerk of Chelan County Superior Court;
2. Reply in Support of Washington State Democratic Central Committee's Motion in Limine to Exclude Evidence of Petitioners' Erroneously Listed "Illegal Convicted Felon Voters;"
2. Declaration of William C. Rava in Support of Washington State Democratic Central Committee's Motion in Limine to Exclude Evidence of Petitioners' Erroneously Listed "Illegal Convicted Felon Voters;"
4. (Amended Proposed) Order Granting Washington State Democratic Central Committee's Motion in Limine to Exclude Evidence of Petitioners' Erroneously Listed "Illegal Convicted Felon Voters;" and
5. Certificate of Service.

These documents were served in the manner described below.

Thomas F. Ahearne	<input checked="" type="checkbox"/>	E-Service Via E-Filing.com
Foster Pepper & Shefelman PLLC	<input type="checkbox"/>	Via Electronic Mail
1111 Third Avenue, Suite 3400	<input type="checkbox"/>	Via Overnight Mail
Seattle, WA 98101-3299	<input type="checkbox"/>	Via U.S. Mail, 1 st Class, Postage
Email: ahearne@foster.com		Prepaid
<i>Attorneys for Respondent Secretary of State</i>	<input type="checkbox"/>	Via Facsimile
<i>Sam Reed</i>		

1	Jeffrey T. Even, Assistant Attorney General	<input checked="" type="checkbox"/>	E-Service Via E-Filing.com
2	P.O. Box 4100	<input type="checkbox"/>	Via Electronic Mail
3	Olympia, WA 98504-0100	<input type="checkbox"/>	Via Overnight Mail
4	Email: jeffe@atg.wa.gov	<input type="checkbox"/>	Via U.S. Mail, 1 st Class, Postage
5	<i>Attorneys for Respondent Secretary of State</i>		Prepaid
6	<i>Sam Reed</i>	<input type="checkbox"/>	Via Facsimile
7			
8			
9	Harry J.F. Korrell	<input checked="" type="checkbox"/>	E-Service Via E-Filing.com
10	Robert Maguire	<input type="checkbox"/>	Via Electronic Mail
11	Davis Wright Tremaine LLP	<input type="checkbox"/>	Via Overnight Mail
12	2600 Century Square, 1501 Fourth Avenue	<input type="checkbox"/>	Via U.S. Mail, 1 st Class, Postage
13	Seattle, WA 98101		Prepaid
14	Email: robmaguire@dwt.com ;	<input type="checkbox"/>	Via Facsimile
15	harrykorrell@dwt.com		
16	<i>Attorneys for Petitioners</i>		
17			
18			
19	Richard Shepard	<input checked="" type="checkbox"/>	E-Service Via E-Filing.com
20	John S. Mills	<input type="checkbox"/>	Via Electronic Mail
21	818 S. Yakima Avenue, Suite 200	<input type="checkbox"/>	Via Overnight Mail
22	Tacoma, WA 98405	<input type="checkbox"/>	Via U.S. Mail, 1 st Class, Postage
23	Email: richard@shepardlawoffice.com		Prepaid
24	<i>Attorneys for the Libertarian Party</i>	<input type="checkbox"/>	Via Facsimile
25			
26			
27	Gary A. Reisen	<input checked="" type="checkbox"/>	E-Service Via E-Filing.com
28	Chelan County Prosecutor's Office	<input type="checkbox"/>	Via Electronic Mail
29	P.O. Box 2596	<input type="checkbox"/>	Via Overnight Mail
30	Wenatchee, WA 98807-2596	<input type="checkbox"/>	Via U.S. Mail, 1 st Class, Postage
31	Email: Gary.Riesen@co.chelan.wa.us		Prepaid
32	<i>Attorneys for Respondent Chelan County</i>	<input type="checkbox"/>	Via Facsimile
33	<i>and Chelan County Auditor</i>		
34			
35			
36	Timothy S. O'Neill, Klickitat County	<input checked="" type="checkbox"/>	E-Service Via E-Filing.com
37	Prosecuting Attorney	<input type="checkbox"/>	Via Electronic Mail
38	Shawn N. Anderson, Klickitat County	<input type="checkbox"/>	Via Overnight Mail
39	Prosecuting Attorney	<input type="checkbox"/>	Via U.S. Mail, 1 st Class, Postage
40	205 S. Columbus Avenue, MS-CH-18		Prepaid
41	Goldendale, WA 98620	<input type="checkbox"/>	Via Facsimile
42	Email: timo@co.klickitat.wa.us		
43	<i>Attorneys for Respondent Klickitat County</i>		
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Barnett N. Kalikow
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Attorneys for Respondent Klickitat County Auditor

- E-Service Via E-Filing.com
- Via Electronic Mail
- Via Overnight Mail
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Facsimile

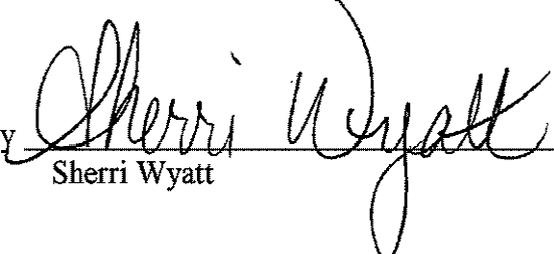
L. Michael Golden, Senior Dep. Pros. Atty.
Office of the Lewis County Prosecuting Attorney
360 NW North Street
Chehalis, WA 98532-1900
Email: imgolden@co.lewis.wa.us
Attorneys for Respondent Lewis County Auditor

- E-Service Via E-Filing.com
- Via Electronic Mail
- Via Overnight Mail
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Facsimile

Gordon Sivley
Michael C. Held
Snohomish County Prosecutors Office
2918 Colby, MS 504
Everett, WA 98201
Email: (gsivley@co.snohomish.wa.us;
mheld@co.snohomish.wa.us)
Attorneys for Respondents Snohomish County and Snohomish County Auditors

- E-Service Via E-Filing.com
- Via Electronic Mail
- Via Overnight Mail
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Facsimile

I declare under penalty of perjury that the foregoing is true and correct, and that this certificate was executed in Seattle, Washington on April 25th, 2005.

By 
Sherri Wyatt